

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

PATRICIA SPARKS,)	
)	
Plaintiff/Counterclaim Defendant,)	
)	
v.)	C.A. No.: CPU5-10-001729
)	
JIM KALICHARAN,)	
)	
Defendant/Counterclaimant.)	

MOTION TO AMEND COMPLAINT

Submitted: April 7, 2011

Decided: May 27, 2011

GRANTED IN PART, DENIED IN PART

Ronald G. Poliquin, Esquire, The Law Firm of Ronald G. Poliquin, 48 The Green, 2nd Floor,
Dover, DE 19901, Attorney for Plaintiff/Counterclaim Defendant

John J. Sullivan, Jr., Esquire, Sanclemente & Associates, LLC, 227 East Main Street,
Middletown, DE 19709, Attorney for Defendant/Counterclaimant.

Reigle, J

This is an appeal to the Court of Common Pleas by Plaintiff and Counterclaim Defendant, Patricia Sparks (“Ms. Sparks”), from a civil judgment in the Justice of the Peace Court in favor of Defendant and Counterclaimant, Jim Kalicharan (“Mr. Kalicharan”). Ms. Sparks has filed a motion to amend her complaint. It is opposed by Mr. Kalicharan. This is the Court’s decision granting the motion in part and denying the motion in part.

Procedure

On February 19, 2010, Ms. Sparks filed an action for breach of contract against Mr. Kalicharan in the Justice of the Peace Court as a self-represented litigant. She sought damages in the amount of \$850.00 plus court costs. Mr. Kalicharan, through counsel, John J. Sullivan, Jr., Esquire, filed an answer and counterclaim alleging that it was Ms. Sparks who breached the contract and owed him damages in the in the amount of \$889.98 and other appropriate relief.

On July 8, 2010, a trial was held. On July 12, 2010, judgment was rendered in favor of Mr. Kalicharan for both the initial claim brought by Ms. Sparks and his counterclaim. He was awarded \$739.98 and \$2.50 in court costs.

On July 22, 2010, Ms. Sparks, again as a self-represented litigant, filed a timely notice of appeal in this Court. Her complaint alleged a cause of action for breach of contract through a hand-written and narrative explanation, which was substantially similar to her allegations in the Justice of the Peace Court. On November 1, 2010, an answer denying the allegations and asserting a counterclaim was filed by Mr. Kalicharan, again through counsel.

On January 28, 2011, Ronald G. Poliquin, Esquire entered his appearance for Ms. Sparks and on March 23, 2011, he filed a Motion to Amend Ms. Sparks’ complaint. Counsel for Mr. Kalicharan filed a response opposing the motion on the grounds that the proposed amendment would violate what is commonly called the mirror image rule and divest this Court of jurisdiction

to hear the case on appeal. On March 28, 2011, oral argument was held and on April 7, 2011 additional submissions were filed.

Motion to Amend the Complaint

Ms. Sparks' motion includes a proposed amendment to the complaint. It is a typed document that complies with the civil rules and forms typically used by counsel. The proposed amended complaint sets forth factual allegations and contains three counts which each contain a separate claim and remedy.

At this stage of the proceedings, the Civil Rules of this Court allows a party to amend a complaint only by leave of the court or by written consent of the adverse party. Leave to amend is generally given in the interests of justice.¹ However, the Court will not permit a party to amend a pleading if it results in a loss of jurisdiction by violation of the mirror image rule.²

The Mirror Image Rule

What is commonly called the mirror image rule or "the McDowell rule" by courts and practitioners was originally articulated in 1857 in *McDowell v. Simpson* which was a *de novo* appeal from the Justice of the Peace Court to Superior Court.³ The Superior Court, in reviewing the original complaint and the complaint filed in its court, noted:

[I]t is the first requisite of a declaration that it shall correspond with the process on which the action is founded, first, in the names of the parties, secondly in the number of the parties, thirdly, in the character or right in which they sue or are sued, and fourthly, in the cause and form of the action; and if it fails to correspond with the process in any of these particulars, the Court will, on motion, set it aside for irregularity.⁴

Subsequently, the mirror image rule was utilized by the Delaware courts. The progeny flows into two separate lines of cases. One set of cases discusses matters where it is alleged that

¹ *Ct. Com. Pleas Civil Rule 15(a)*.

² *See Silverview Farm v. Laushey*, 2006 WL 1112911 (Del.Com. Pl.) at *4.

³ *McDowell v. Simpson*, 1857 WL 1024 (Del. Super. 1885).

⁴ *McDowell* at *1.

identical *parties* have not been joined in the *de novo* appeal.⁵ Another set of cases discusses matters where it is alleged that identical *claims* have not been joined in the *de novo* appeal.⁶

When it was argued to the Delaware Supreme Court in *Fossett v. Dalco Construction* that the rule was antiquated and old-fashioned and should not be followed in modern practice, the Court responded and reiterated the logic of the mirror image rule. It stated:

We acknowledge that there is a policy rationale for the rule. The rule provides for an adequate and fair hearing of the *entire* matter *de novo* by affording all parties to the Justice of the Peace proceeding an opportunity to argue their version of the facts, to present their view of the law's application to those facts, and to assure the *de novo* reviewing court that all relevant issues that could be presented can be heard. The rule also spares a judge hearing an appeal *de novo* from having to consider assertions about facts and law attributable to a party below who or which was not made a party to the *de novo* appeal. Lastly, the mirror image rule arguably avoids difficulties that might arise in joining unnamed parties after the expiration of the fifteen-day jurisdictional limit for an appeal from Justice of the Peace Court.⁷

The Court also suggested, in its decision, that rule which was established by case law should become part of the court's civil rules to provide greater notice to litigants of the jurisdictional defect if their appeal did not match their action in the court below and violated the mirror image rule. The Court of Common Pleas subsequently enacted such a rule. It states: "An appeal to this Court that fails to join the identical parties and raise the same issues that were before the Court below shall result in a dismissal on jurisdictional grounds."⁸

In the instant case, the proposed amendment to the complaint is opposed on the grounds that it alleges claims which are not identical to the claims presented in the Justice of the Peace Court. Each count will be analyzed separately for compliance with the mirror image rule.

⁵ See *Dzedze v. Prusinski*, 259 A.2d 384 (Del. Super. 1969), *Panzer v. Farrall*, 1987 WL 8223 (Del. Super.), *Sulla v. Quillen*, 1987 WL 18425 (Del. Super.), *Hicks v. Taggart*, 1999 WL 462375 (Del. Super.) and *Fossett*.

⁶ See *Crosse v. Cohen*, 2000 WL 33653441 (Del. Com. Pl.), *Pavetto v. Hansen* 2004 WL 2419164 (Del. Super.), *Silverview Farm*, *Rezak v. S & L Contractors*, 2007 WL 549905 (Del. Com. Pl.2007), *Ceccotti v. Leight*, 2007 WL 707552 (Del.Com.Pl.) and *Paitzel v. KLT Bump Telecom*, 2007 WL 1248448 (Del. Com. Pl.).

⁷ *Fossett v. Dalco Constr.*, 858 A. 2d 960 (Del. 2004) *unpub.* 2004 WL 1965141 (Del. Supr.) at 1.

⁸ *Ct. Com. Pleas Civ. Rule 72.3(f)*.

Count I - Wages Due under 19 Del. C. § 1111

This proposed count alleges a statutory claim for failure to pay wages and liquidated damages. Counsel for Mr. Kalicharan contends that such a claim would violate the mirror image rule because wages and an employer-employee relationship was never alleged or argued at trial in the Justice of the Peace Court and therefore this Court should not grant leave to amend the complaint. Counsel for Ms. Sparks alleges that her wage claim can be gleaned from the Court's decision and order. He also argues that Ms. Sparks should not be precluded from presenting her claim by a denial of leave to amend her complaint on the grounds of public policy and conservation of judicial and public resources by the use of one cause of action.

This Court has previously discussed in *Silverview Farm v. Laushey*, the difficulty that is presented when it must consider the identical nature of a claim when the Court below is not a court of record and there is no transcript of the proceedings.⁹ The Court suggested that while the final order is important, it is not the only aspect of the case to consider. The failure of a claim to be addressed in an order should not be defective in itself because the claim on appeal may be failure to address the claim in the order below.¹⁰

In the instant case, this Court examined several factors to determine the breadth of Ms. Sparks' claim in the Justice of the Peace Court to determine if her claim for wages was raised.

First, there is the original complaint to be considered. Ms. Sparks' original complaint in the Justice of the Peace Court states:

Mr. Kalicharan owns Delaware Mortgage and hired me to sell loans. Upon doing that he asked me to pay for my license and disc totaling \$1,045. I gave him \$500.00 at one time and \$100.00 at another for the disc, and then another \$250.00. Mr. Kalicharan never registered me to sell mortgages. When asked to

⁹ *Silverview* at *3.

¹⁰ *Silverview* at *3.

give me the money back, he said he used it to open an office which me and another girl was in. He didn't charge her anything for the office.¹¹

The amount of money that Ms. Sparks claimed was \$850.00. This was a refund of all of the money that she paid Mr. Kalicharan for her training or receipt of a license to sell mortgages. She did not allege in her complaint any narrative or monetary claim for lost wages.

Second, there is the Court's written order. The Justice of the Peace Court decision includes the following statements: "[d]efendant states that he did hire another person to work" and "[d]efendant stated that he had to let Plaintiff go"¹² Either statement could be construed as reference to an employer-employee relationship. However, none of the monetary amounts discussed in the order include anything other than the claims for refunds for amounts of money paid by Ms. Sparks to Mr. Kalicharan and the counterclaims by Mr. Kalicharan that Ms. Sparks owed him expenses. There is no discussion in the order of any amounts for wages.

Third, there is the trial itself. Mr. Sullivan was present at the trial as the attorney for Mr. Kalicharan and was present at the oral argument on this Motion. He clearly and unequivocally stated that a wage claim was not discussed during the trial. He is an officer of the Court and therefore this Court finds it appropriate to rely upon his representations in its decision.¹³

The cause of action on appeal for wages under Del.Code Ann. tit. 19 § 1111 is not identical to the cause of action in the original proceedings. In its proposed Amended Complaint, Ms. Sparks alleges a statutory claim for wages which was not presented in the court below in her complaint, not addressed in the Court's order and not presented at trial. The judge heard and decided a claim and counterclaim for breach of contract. Ms. Sparks did not raise a claim for

¹¹ *Complaint, Justice of the Peace 16*, February 19, 2010.

¹² *Order, Justice of the Peace Court 16*, July 12, 2010

¹³ *See Del. Lawyers' Rule of Prof'l Conduct 3.3(a)(1) (Candor toward the tribunal)..*

wages or allege an employer and employee relationship. This Court does not have jurisdiction to hear a statutory claim for wages on a *de novo* appeal that was not presented in the Justice of the Peace Court.

In *Paitsel v. KLT Bump Telecom*, an almost identical scenario was presented to this Court.¹⁴ Paitsel filed a breach of contract claim in the Justice of the Peace Court and judgment was rendered for the defendant. Paitsel appealed and added a statutory claim for wages in the complaint he filed in the Court of Common Pleas. The defendant moved to dismiss the action on the grounds that it violated the mirror image rule and the Court agreed and dismissed the case for lack of jurisdiction.¹⁵

Count II Breach of Contract

This proposed count alleges breach of contract. Mr. Kalicharan does not specifically object to this amendment to the complaint. This Court has stated that a litigant's complaint on appeal that merely sets forth more specific legal claims, but does not alter the subject matter of the case below, does not violate the mirror image rule.¹⁶ In this case, the original complaint filed in the Justice of the Peace Court alleges a claim for breach of contract that is substantially similar to Ms. Sparks' complaint filed in this Court. Proposed Count II alleges that the defendant failed to comply with a contract entered into between the parties and failed to train or take substantial steps to ensure that plaintiff became a mortgage loan officer. In addition, Proposed Count II states that the plaintiff suffered damages as a result of defendant's alleged breach. Proposed Count II merely sets forth a more specific legal claim than the plaintiff's Justice of the

¹⁴ *Paitsel* at *1.

¹⁵ *Paitsel* at *1.

¹⁶ *Crosse* at *2.

Peace Court complaint. It does not alter the claim in the case below. Thus, this proposed amendment does not violate the mirror image rule.

Count III - Breach of Good Faith and Fair Dealing and Unjust Enrichment

This proposed count alleges that Mr. Kalicharan breached his duty to act in good faith and deal fairly with Ms. Sparks and claims that he was therefore unjustly enriched. Mr. Kalicharan contends that the addition of these claims to the plaintiff's complaint would violate the mirror image rule and therefore the complaint should not be permitted to be amended.

The defendant's contention is not correct. In a similar case in this Court, *Rezac v. S & L Contractors*, Rezac filed a complaint for breach of contract in the Justice of the Peace Court.¹⁷ In the complaint filed after the matter was appealed *de novo*, a breach of warranty claim was incorporated. The defendant, S & L Contractors, claimed that the Rezac's complaint on appeal violated the mirror image rule. This Court held that a claim for breach of contract includes within its scope a claim for breach of warranty. Thus, the mirror image rule was not violated because the plaintiff did not allege a claim on appeal different from the claim asserted in the Court below.¹⁸

In this case, the plaintiff seeks to add breach of good faith and fair dealing and unjust enrichment claims to her complaint. Like the breach of warranty claim discussed in *Rezac*, these claims are inherently part of a breach of contract claim and are therefore integral to the original complaint. Proposed Count III does not allege claims different from the claim asserted in the Justice of the Peace Court and it therefore does not violate the mirror image rule.

¹⁷ *Rezac* at *1.

¹⁸ *Rezac* at *1.

Conclusion

The motion to amend the complaint to include Count I is denied and the motion to amend the complaint to include Counts II and III is granted. The plaintiff must submit an amended complaint consistent with this order and the Rules of this Court. The defendant must submit an amended answer consistent with the Rules of this Court.

IT IS SO ORDERED.


The Honorable Anne Hartnett Reigle